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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,396	12/09/2003	Robert W. Kenny	20006.0001US01	4532
7590 01/11/2006			EXAMINER	
WITHERS & KEYS, LLC			LE, HUYEN D	
P.O. Box 71355			ART UNIT	
Marietta, GA 30007-1355			PAPER NUMBER	
			3751	
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/731,396	KENNY ET AL.	
	Examiner	Art Unit	
	Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10-15, 17, 21, 23, 24, 29-31, 33-35, 39, 41-45 and 47-50 is/are rejected.
- 7) ☒ Claim(s) 5, 7-9, 16, 18-20, 22, 25-28, 32, 36-38, 40 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species IV in the reply filed on 10/03/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Currently, claims 1-50 are readable on the elected species.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 6, 10-12, 14, 17, 21, 23, 29, 30-31, 33, 39, 41-45, 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sage et al (4,630,323).

The Sage et al reference discloses a guard panel for a fixture comprising: an enclosure 11 comprising a first side and a second side made of a flexible material 16; and an inner layer having foam padding disposed within the enclosure 11.

Regarding claims 3 and 33, the first and second sides are a plastic.

Regarding claims 10, 21, the guard panel comprises an adhesive layer that is attached to the second side and adheres to a surface of a fixture (see col. 3, lines 30-36).

Regarding claim 12, the second sheet comprises a non-skid layer that abuts a surface of a fixture when the fixture guard panel is positioned on the fixture (see col. 3, lines 36-38).

Regarding claims 29, 39 and 45, a fixture guard system comprises a juncture 45 (Fig. 7) between the first fixture guard panel 11 and second fixture guard panel 13 to allow the panels to move relative to one another.

Regarding claim 31, the first guard panel 11 comprises an adhesive layer adheres to a surface of a fixture (see col. 3, lines 30-36).

Regarding claims 41, 44, 48 and 50, the second sheet is a non-skid layer material (see col. 3, lines 30+).

5. Claims 1-3, 6, 11, 13, 14, 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ziebert et al (6,112,340).

In Ziebert et al reference, it discloses hot tub cover or spa cover constituting a guard panel for a fixture comprising: an enclosure comprising a first side and a second side made of a flexible vinyl material; and an inner layer having foam padding disposed within the enclosure and the material sewn around the foam.

6. Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by DeCosta (5,085,212).

The DeCosta reference discloses a guard panel comprising: an enclosure 3 comprising a first side of a first flexible material 2, and a second side made of a flexible material 9; and an inner layer having foam padding 10 disposed within the enclosure 3.

Regarding claim 13, the first sheet and second sheet are hemmed together at one edge.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 15, 24, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziebert et al (6,112,340).

Although the reference Ziebert et al reference does not specifically disclose that the first and second side of the guard panel is made of woven polyethylene, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select woven polyethylene for the Ziebert et al panel, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323).

Although the reference Sage et al reference does not specifically disclose that the first and second side of the guard panel is made of a plastic material such as woven polyethylene, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select woven polyethylene for the Sage et al panel, since

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selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

10. Claims 5, 7-9, 16, 18-20, 22, 25-28, 32, 36-38, 40 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bullock, Sarno and Rinaldi references teach a fixture guard panel having enclosure with a foam disposed inside.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890.

The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huyen Le
Examiner
Art Unit 3751

January 6, 2006